KALIBRE PTY LTD SOFTWARE END USER LICENSE AGREEMENT STANDARD TERMS AND CONDITIONS

These Terms and Conditions are to be read in conjunction with the License Certificate.

These Terms and Conditions, together with the License Certificate constitute the agreement between you and Kalibre Pty Ltd regarding the software described in the License Certificate ("the Agreement") and are legally binding on you.

The License only becomes effective upon the issuance by the Licensor of the License Certificate to the Customer. Until the License Certificate is issued to the Customer, you have no right to access or use the Licensed Software.

OPERATIVE

1.   DEFINITIONS AND INTERPRETATION

1.1   In this Agreement, unless the context otherwise requires:

"**Agreement**" means these End User License Agreement Standard Terms and Conditions and the License Certificate, which when read together constitute the agreement for the licensing of the Licensed Software.

"**Associates**" means in relation to a person, the employees, officers, directors, representatives, agents and contractors (including sub-contractors) of that person and of any Related Entity of that person (if any).

"**Business Day**" means a day which is not a Saturday, Sunday or government declared public holiday in Melbourne, Victoria, Australia.

"**Confidential Information**" means all information of a confidential nature belonging to or in the possession of a Party, consisting of business, financial and other commercially valuable information in whatever form including know how, trade secrets, unpatented inventions, processes, business and marketing policies and strategies, employee and client details, formulae, computer software, code, graphs, drawings, designs, samples, devices, models and other materials (and in the case of the Licensor, includes the Licensed Software) provided that the following will constitute an exception to such information:

(a)   information which is already in the public domain;

(b)   information which hereafter becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the recipient Party or its representatives;

(c)   information which is or becomes available to the recipient Party from a third party lawfully in possession thereof and who has the lawful power to disclose such information to the recipient Party; and

(d)   information which is rightfully known by the recipient Party (as shown by its written record) prior to the date of the disclosure to it or otherwise independently developed by an employee of the recipient Party who has no knowledge of the disclosure to it hereunder.

Confidential Information owned by the Licensor or in relation to which the Licensor holds certain Intellectual Property Rights includes the Licensed Software, Documentation and Source Code.

"Customer" means the person named as such in a License Certificate.

"Documentation" means the operating manuals, technical specifications, user manuals, and other printed or electronic literature made available to the Customer by the Licensor to aid the use and application of the Licensed Software as described in the License Certificate.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Force Majeure" means any event beyond the reasonable control of the Parties which prevents or materially prejudices or renders materially more expensive, a Party performing one or more of its obligations (other than an obligation to pay money) and includes but is not limited to:

(a)   acts of God, natural disasters, fire, flood, lightning strikes, earthquakes, storms, explosions, transport delays, telephone and data connection interruption;

(b)   acts of war, terrorism, riot, civil disturbance, third party criminal activity; or

(c)   industrial action including pickets, work to rule, work bans and strikes.

"GST" has the meaning given in section 195-1 of the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

A person is **"Insolvent"** if:

(a)   it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);

(b)   it is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;

(c)   it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party to this agreement);

(d)   an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within twenty (20) Business Days), resolution passed, which is preparatory to or could result in any of (a), (b) or (c) above;

(e)   (under section 459F(1) of the Corporations Act) it has failed to comply with a statutory demand or had the statutory demand set aside pursuant to section 459G of the Corporations Act;

(f)   it is the subject of an event described in section 459C(2)(b) of the Corporations Act (or it makes a statement from which the other Party to this agreement reasonably deduces it is so subject); or

(g)   something having a substantially similar effect to (a) to (f) happens in connection with that person under the law of any jurisdiction.

"Intellectual Property Rights" means statutory and other property rights in respect of trademarks, patents, circuit layouts, copyrights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing The World Intellectual Property Organisation of July 1967.

"Kalibre Web-site" means the Licensor's website identified by the URL http://kalibre.com.au/.

"Liability" includes Losses.

"**Liability Cap Amount**" means an amount of money equivalent to the License Fee.

"License" means the non-exclusive license granted by the Licensor pursuant to clause 2.

"License Capacity" means the specified number of users, seats, or other conditions of use of the Licensed Software described in the License Certificate.

"License Certificate" means the license certificate issued to the particular Customer.

"License Fee" means the fee paid by the Customer to the Licensor specified in the Invoice.

"Licensed Software" means the software described in the License Certificate, but does not include any Source Code.

"Licensed Software Delivery Date" means the date on which the Licensed Software is made available to the Customer.

"Licensor" means KALIBRE Pty Ltd (ABN 62 126 737 568) of Level 3, 480 Collins St, Melbourne, Victoria, 3000, Australia.

"Losses" means claims, losses, liabilities, damages, costs and expenses of any kind, including those which are prospective or contingent and those the amount of which is not ascertained or ascertainable.

"Minimum Computer Equipment" means the computer equipment required to enable the Licensed Software to function, described in the Documentation.

"Moral Rights" means the suite of rights conferred on a creator of copyright works by Part XI of the *Copyright Act 1968* (Cth) or any analogous rights in respect of any other jurisdiction.

"Party" means a party to this Agreement and **"Parties"** means both parties to this Agreement.

"Invoice" means a Valid Tax Invoice issued to the Customer by the Licensor for both the License Fee and the fee payable for the first year of support under the Support and Maintenance Contract.

"Related Entity" has the meaning given to it in the Corporations Act.

"Source Code" means the complete high level language computer programs in human readable alphanumeric characters, which when compiled, generate the object and executable program that constitutes a usable software product and any relevant documentation including the description of the development environment for the software in a manner allowing the Customer through a competent software development team with domain expertise to independently operate, modify, support and maintain the software.

"Statute" means any act of any parliament or other legislative body or any regulations or other subordinate instrument made under or pursuant to such an act.

"Support and Maintenance Contract" means a contract entered into between the Customer and Licensor for the support, maintenance and updating of the Licensed Software.

"Territory" means Australia.

"Third Party Software" means the third party software (which the Licensed Software works in conjunction with and is reliant upon to operate) described in the Documentation.

"Valid Tax Invoice" means a tax invoice that complies with the relevant GST Act.

"Viruses" means any viruses, time-bombs, back doors, trojan horses and any other form of malevolent or defective code or similar items.

1.2   In this Agreement headings are inserted for convenience only and will not affect interpretation. Unless expressly provided otherwise:

   (a)   words importing the singular include the plural and vice versa;

   (b)   a word importing a gender includes the other genders;

   (c)   other grammatical forms of defined words or expressions have corresponding meanings;

   (d)   the meaning of general words will not be limited by specific examples;

   (e)   a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

(f)   a reference to a clause, paragraph, or Annexure is a reference to a clause or paragraph, or annexure to this Agreement and a reference to this Agreement includes all License Certificates and Annexures;

(g)   a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;

(h)   a reference to a Party or a person includes the Party's or the person's executors, legal personal representatives, successors, permitted transferees and assigns;

(i)   a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;

(j)   a reference to a month means a calendar month;

(k)   a reference to any legislation or statutory instrument or regulation will be construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation as applicable;

(l)   a reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation; and

(m)   a reference to "$" means Australian dollars and a reference to payment means payment in Australian dollars.

1.3   If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a Party or is within the discretion of a Party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Party in its absolute discretion, unless this Agreement expressly provides otherwise.

1.4   The documents comprising this Agreement will be read in the following order of precedence:

(a)   the License Certificate; and

(b)   the clauses of these terms and conditions

1.5   Where any conflict occurs between the provision contained in two or more of the documents forming this Agreement, the document lower in the order of precedence will where possible be read down to resolve such conflict.

If the conflict remains incapable of resolution by reading down, the conflict provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

2. SOFTWARE LICENSE

2.1   On and from the Licensed Software Delivery date, the Licensor grants to the Customer a non-exclusive, non-transferable license in the Territory to:

        (a)   use and install the Licensed Software for the Customer's internal purposes only in accordance with the terms of this Agreement and the License Certificate; and

        (b)   create one back up copy of the Licensed Software;

2.2   The Customer acknowledges and agrees that, to the maximum extent permitted by law, the Customer will not:

        (a)   disassemble, decompile or reverse engineer the Licensed Software;

        (b)   merge the Licensed Software with any other software;

        (c)   adapt, modify, translate, decrypt or make derivative works of, the Licensed Software, without the prior express written permission of the Licensor;

        (d)   use the Licensed Software to provide services to third parties other than where expressly notified to, and approved in writing by, the Licensor;

        (e)   make copies of and distribute, resell or sublicense the Licensed Software to third parties other than in accordance with clause 3;

        (f)   other than in accordance with clause 3, make the Licensed Software available to third parties, whether on a public or external distributed network or otherwise;

        (g)   other than in accordance with clause 3, allow access to the Licensed Software on any form of intranet, unless it is restricted to authorised users; or.

        (h)   otherwise than as expressly provided in this Agreement, access, copy, reproduce, remove, transfer (whether in whole or in part) or otherwise deal with the Licensed Software in any manner inconsistent with the terms of this Agreement;

        or in any way attempt or authorise or assist any other person to do, or attempt to do, so.

2.3   Where the law in any jurisdiction grants the Customer the right to do any of the things referred to in clause 2.2 and such right:

        (a)   may be excluded by the agreement of the Parties, the Parties hereby exclude the right and the Customer will have no right to exercise such right;

(b) may not be excluded but may be modified by the Parties, the Parties hereby agree that such right will be modified so as to the maximum extent permitted by law limit the Customer's right to exercise such right; and

(c) may not be excluded or modified by the agreement of the Parties, such right will be deemed to be included in the License, to the extent that the License operates in the jurisdiction. However, if the law requires that certain conditions must be satisfied by the Customer in order for the Customer to be entitled to exercise such right, the Customer must satisfy each of those conditions if it wishes to exercise the right.

2.4 Subject to clause 2.12 and 3.2, to the maximum extent permitted by law, the License is non transferable.

2.5 Where the law in any jurisdiction grants the Customer the right to transfer the License as such License operates in the jurisdiction and such right to transfer the License:

(a) may be excluded by the agreement of the Parties, the Parties hereby exclude the right to transfer the License in such jurisdiction and the Customer will have no right to transfer the License in so far as it operates in that jurisdiction;

(b) may not be excluded but may be modified by the Parties, the Parties hereby agree that the right to transfer the License will be modified so as to the maximum extent permitted by law limit the Customer's right to transfer the License; and

(c) may not be excluded or modified by the agreement of the Parties such right to transfer the License will be deemed to be included in this Agreement to the extent that the License operates in the jurisdiction. However, if the law requires that certain conditions must be satisfied by the Customer in order for the Customer to rely on the law to be entitled to transfer the License in so far as it operates in the jurisdiction, the Customer must satisfy each of those conditions if it wishes to transfer the License in so far as it operates in that jurisdiction.

(d) The Customer may not sub-license or in any way distribute the Licensed Software other than in accordance with clause 3.

2.6 The Customer acknowledges and agrees that the license granted in this clause 2:

(a) is limited to the Territory;

(b) does not include the grant of any right to or access to Source Code;

(c) is limited to the provision of the then current version of the Licensed Software as made available on the Licensed Software Delivery Date:

(d)   is limited to the License Capacity and that any proposed usage of the Licensed Software beyond the License Capacity will require a further license to be obtained by the Customer from the Licensor (which license may be granted by the Licensor on such terms as are acceptable to the Licensor in its absolute discretion); and

(e)   does not include the provision of updates to, or support or maintenance of the Licensed Software;

2.7   The Customer acknowledges and agrees that it is a condition precedent to being granted the License that it enters into a Support and Maintenance Contract with the Licensor for a period of 12 months from the Licensed Software Delivery Date.

2.8   Subject to entry into the Support and Maintenance Contract on or before the Licensed Software Delivery Date, updates to, or support or maintenance of the Licensed Software will be provided by the Licensor in accordance with the Support and Maintenance Contract.

2.9   The Customer acknowledges and agrees that subject to the Customer entering into the Support and Maintenance Contract, the Licensor's obligations to maintain and upgrade the Licensed Software will be limited to the period of 12 months from the Licensed Software Delivery Date.

2.10   If the Customer wishes to obtain any further support and maintenance services in relation to the Licensed Software after the expiry of the 12 month period from the Licensed Software Delivery Date, the Customer will be required to enter into a further Support and Maintenance Contract with the Licensor.

2.11   The Customer further acknowledges and agrees that the Licensed Software functions in conjunction with and is reliant upon the Third Party Software in order to operate and that;

(a)   the Customer will be required to obtain (at the Customer's cost) licenses to the Third Party Software as such Third Party Software is current at the Licensed Software Delivery Date;

(b)   changes to the availability or operation of the Third Party Software which affect the operation of the Licensed Software may render the Licensed Software inoperable, or otherwise adversely affect its performance;

(c)   the Licensor will not be liable for or responsible for defects or adverse impacts on the operation or performance of the Licensed Software caused by any changes to the availability or operation of the Third Party Software; and

(d)   the Licensor makes no representations or warranties that the Third Party Software will continue to be available, will be updated or will remain suitable for use in conjunction with the Licensed Software.

2.12   In the event that the Customer wishes to transfer the License, the Customer shall;

(a)   notify the Licensor in writing at least 28 days before any proposed transfer; and

(b)　　provide all the details requested by the Licensor of the proposed transferee and the proposed conditions of transfer.

The Licensor may grant a transfer of the License on any conditions it requires pursuant to clause 3.2 and subject to the transferee:

(a)　　if not funded by the crown, being in a sound financial position;

(b)　　not presenting a risk of default or breach under the terms of the License greater than the Customer;

(c)　　being, in the reasonable opinion of the Licensor, an appropriate person to hold the License;

(d)　　not being a competitor of the Licensor; and

(e)　　executing a license in a form substantially similar to and in any event no less onerous than the terms of this Agreement.

2.13　　The Customer acknowledges and agrees that:

(a)　the Licensed Software will not function other than where the requirements relating to the Minimum Computer Equipment and Third Party Software have been met in full; and

(b)　the Licensor is not responsible for, or obliged to remedy any adverse affect on the operation of the Licensed Software as a result of:

(i)　　the Customer not having the Minimum Computer Equipment or Third Party Software in place;

(ii)　　the Customer not having the Minimum Computer Equipment or Third Party Software operating correctly; or

(iii)　　any changes to the Customer's computer system or any software used by the Customer including new versions of any software used on or in conjunction with the Customer's computer system (including without limitation changes to the Minimum Computer Equipment or Third Party Software).

3.　　SUB LICENSING

3.1　　In the event that the Customer wishes to sub-license the Licensed Software, it may do so provided:

(a)　　it notifies the Licensor in writing of the proposed sub-license;

(b)　　the Licensor approves such sub-license (including the form of such sub-license) in writing before any agreement is reached between the Customer and its sub-licensee;

(c)   there is a prohibition on sub licencing by the sub licensee (other than with the express written approval of the Licensor); and

(d)   the Customer acknowledges and agrees that it remains responsible for and liable in relation to any default by the sub-licensee under any sub license entered into.

3.2   In the event that the Customer seeks either to transfer the License pursuant to clause 2.12 above, or sub-license the Licensed Software pursuant to clause 3.1 above, the Customer acknowledges and agrees that the Licensor may at the Licensor's discretion impose any conditions in relation to such transfer, or sub license, including, but not limited to requirements that;

(a)   the Licensor be made a party to any such transfer or sub-license agreement; and

(b)   the Customer indemnify the Licensor in relation to any Losses the Licensor sustains as a result of the transfer or sub-license, including any breach by the transferee or sub licensee of the terms of such transfer or sub license agreement.

4.   INTELLECTUAL PROPERTY

4.1   Other than rights expressly granted at clause 2, no right, title or interest is granted to the Customer in the Licensed Software, and the Customer expressly disclaims any such right, title or interest and will not during or after this Agreement challenge or dispute the Licensor's ownership of or rights to the Licensed Software.

4.2   Subject to clause 4.3, the Licensor retains ownership of and rights to all Intellectual Property Rights in the Licensed Software and the Customer will not, during or after the Term, challenge or dispute such ownership or rights.

4.3   Despite any other provision of this Agreement, as between the Customer and the Licensor, the Customer will own the Intellectual Property Rights which reside solely in the raw data provided by the Customer and processed or generated using the Licensed Software. Any information, reports, documents generated by the Customer using the Licensed Software will not be owned by the Licensor. However, nothing in this clause transfers ownership of the underlying code that produces or generates such information, reports or documents.

4.4   The Customer must only use the Licensed Software in accordance with the terms of this Agreement.

4.5   The Customer warrants to the Licensor that:

(a)   it owns or has all necessary Intellectual Property Rights to all material provided by it or its agents to the Licensor for incorporation into the Licensed Software; and

(b)   it has all necessary authority from relevant third party software owners to permit and enable the Licensed Software to inter-operate

with third party software installed on the Customer's computer system including the Third Party Software.

5. SECURITY

5.1 The Customer will treat the Licensed Software as Confidential Information belonging to the Licensor.

5.2 In providing any disclosure of any part of the Licensed Software to any third party contractor, the Customer will ensure that it procures that any such third party contractor executes a Confidentiality Deed ("the Deed") in favour of the Licensor to protect the confidentiality of the Licensed Software, on terms no less onerous than the confidentiality requirements specified in this Agreement prior to the Customer making any such disclosure to the third party contractor.

5.3 A copy of the Deed is to be provided to the Licensor before execution and before the Licensed Software is disclosed and such Deed is to be approved by the Licensor in writing (at the Licensor's discretion) before being executed. The Customer will provide a copy of the Deed to the Licensor within 48 hours of execution of the Deed.

5.4 The Customer will use all reasonable endeavours to ensure that the Licensed Software is protected at all times from access, use or misuse, copying, damage or destruction not authorised under this Agreement, and only reveal the Licensed Software to those of its employees, officers and contractors and clients on a needs to know basis.

5.5 The Customer will not delete or allow the deletion of any confidentiality/proprietary or terms of use notices on, and will replicate such notice on any copy of, the Licensed Software.

6. TIME OF THE ESSENCE

Time, in relation to the payment of fees or other amounts by the Customer to the Licensor, is of the essence.

7. WARRANTIES

7.1 The Licensor warrants that; (a) it owns or holds all necessary Intellectual Property Rights to grant the license at clause 2; and (b) that use of the Software in accordance with the directions provided by the Licensor will not infringe the rights (including any Intellectual Property Rights or Moral Rights) of a third person. The warranties provided by the Licensor to the Customer are limited in all cases to the Licensed Software and do not extend to any hardware or software used by the Customer, whether used in conjunction with the Licensed Software or otherwise.

7.2 The Customer acknowledges and agrees that the Licensed Software is provided by the Licensor solely on an "as is" basis.

7.3 Without limiting the generality of clause 7.1, the Customer acknowledges and agrees that the Licensor provides no representation or warranty:

(a)   that use of the Licensed Software:

<table>
<tr><td>(i)</td><td>will not infringe or otherwise violate the rights (including Intellectual Property Rights or Moral Rights) of any person; or</td></tr>
<tr><td>(ii)</td><td>constitute a misuse of any person's confidential information,</td></tr>
</table>

(b)   that the Licensed Software will meet the Customer's requirements;

(c)   that the Licensed Software does not contain any defects or Viruses;

(d)   that operation of the Licensed Software will be error free;

(e)   that there are no defects in the Licensed Software;

(f)   that the Licensed Software will be uninterrupted;

(g)   that Licensed Software will operate in hardware and software combinations other than those expressly stated in Minimum Computer Equipment and Third Party Software; or

(h)   that the Licensed Software will detect or correctly identify and/or disinfect any threats, applications (whether malicious or otherwise) or any other components.

7.4   The Licensor makes no warranties to the Customer, with respect to Third Party Software or the Minimum Computer Equipment including (without limitation) in relation to the continued availability, performance or functionality of any of these relative to the Licensed Software.

8.   FEES

8.1   The Customer will pay the License Fee and any applicable GST on the terms and in the amount and within the time provided for in any Invoice sent to Customer by Licensor.

8.2   The Customer will pay the License Fee and any applicable GST in full and without deduction or abatement.

8.3   The Customer will pay interest on any sums unpaid to the Licensor after becoming due and payable and at the rate from time to time applied by the Penalty Interest Rates Act (Victoria) 1983.

8.4   Payments will be made by electronic funds transfer to the account the Licensor nominates to the Customer from time to time.

8.5   If the Customer wishes the Licensor to install or customise the Licensed Software, such installation and customisation will be performed by the Licensor pursuant to a Services Fee Agreement to be entered into between the Licensor and Customer and all costs associated with installation of the Licensed Software or any customisation will be charged to and be payable by the Customer in accordance with the Licensor's Services Fee Agreement.

9. CONFIDENTIALITY

9.1 In relation to the Confidential Information of a Party, the recipient Party will:

    (a) use the Confidential Information only for the purposes for which it has been disclosed;

    (b) keep that Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:

        (i) with the consent of the owner of the Confidential Information;

        (ii) to Associates to the extent that each has a need to know for the purposes contemplated by this Agreement and who are aware that the Confidential Information will be kept confidential;

        (iii) to its legal advisors and auditors and other consultants who require it for the purposes contemplated by this agreement or for the purpose of providing legal or commercial advice in relation to this agreement;

        (iv) if required to do so by law or a stock exchange; or

        (v) if required to do so in connection with legal proceedings relating to this Agreement;

    (c) take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information; and

    (d) continue to keep confidential all Confidential Information of the other Party.

9.2 With the exception of information which the Licensor needs to retain for its own business records, upon request of the Customer, the Licensor must return to the Customer that Confidential Information of the Customer or that the Customer requests that the Licensor returns or if the Customer requests that it be destroyed, certify that it has been destroyed.

9.3 With the exception of (a) information which the Customer needs to retain for its own business records; and (b) where the license granted in clause 2 is to continue, the Licensed Software, upon the request of the Licensor, the Customer must return to the Licensor that Confidential Information of the Licensor that the Licensor requests that the Customer returns.

9.4 The rights and obligations of the Parties set out in this Agreement with respect to Confidential Information will survive termination of this Agreement.

9.5 The Licensor is entitled to inform third parties of the fact that the Customer has a license of the Licensed Software.

9.6   The Customer is entitled to inform third parties of the fact that the Customer has a license of the Licensed Software from the Licensor.

10.   IMPLIED TERMS

10.1   Subject to clause 10.2 the Licensor provides no representation or warranty in relation to the Licensed Software other than the express limited warranties set out in clause 7.

10.2   Where any legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of, or any liability under, such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, the liability of the Licensor for any breach of such condition or warranty will be limited, at the Licensor's option, to one or more of the following:

(a)   if the breach relates to goods:

(i)   the replacement of the goods with equivalent goods or the supply of equivalent goods;

(ii)   the repair of such goods;

(iii)   the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv)   the payment of the cost of having the goods repaired; and

(b)   if the breach relates to services:

(i)   the supplying of the services again; or

(ii)   the payment of the cost of having the services supplied again.

11.   LIMITATION OF LIABILITY

11.1   Subject to clause 11.7, but otherwise notwithstanding anything to the contrary in this Agreement, the Licensor's total liability for damages or other forms of monetary relief for matters related to, connected with or arising out of this Agreement regardless of the cause of action, whether in contract, tort (including, without limitation, negligence) or breach of any Statute or any other legal or equitable obligation is limited to the Liability Cap Amount.

11.2   Where any Statute implies in this Agreement any term, and that Statute avoids or prohibits provisions in a contract excluding, restoring or modifying the application of, or the exercise of, or liability under such term, such implied terms as are not excludable will be deemed to be included in this Agreement. However, the liability of the Licensor for any breach of such term will be limited, at the option of the Licensor, to any one or more of the following:

(a)   if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(b)   if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

11.3   In no event will any Party be liable to another for any incidental, special, indirect, consequential Losses or damage of any character, (including without limitation, loss of profit, revenue, goodwill or anticipated savings, loss of data, work stoppage or computer failure).

11.4   Without limitation to the generality of clause 11.3, under no circumstances will the Licensor be liable for direct, indirect or consequential Losses, personal injury or death arising out of or in connection with:

(a)   the Customer's computer equipment, (including the Minimum Computer Equipment) failing to operate in accordance with its specification or otherwise;

(b)   any element of the Customer's business not functioning correctly; or

(c)   any act or omission of any person acting as the Customer's representative for the purpose of clause 4.5.

11.5   The Customer warrants that it has not relied on any representation made by the Licensor which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document or publicity material produced by the Licensor.

11.6   The Customer acknowledges that to the extent the Licensor has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

11.7   The Customer indemnifies the Licensor and each of its Associates (the "Indemnified") against any Losses incurred by the Indemnified, arising directly out of any of the following:

(a)   any fraud or wilful misconduct of the Customer, or its Associates under or in connection with this agreement causing Liability;

(b)   any infringement or alleged infringement of the Licensor's or a third party's Intellectual Property Rights by the Customer or any of its Associates;

(c)   personal injury, death or loss of or damage to real or tangible personal property (excluding data) caused by the Customer or any of its Associates;

(d)   breach by the Customer of any obligation of confidentiality owed to the Licensor;

(e)   any claim, action or proceeding by a third party against any of the Indemnified to the extent that it relates to a breach of this Agreement by the Customer; or

(f)   a breach of the warranty in clause 4.5.

11.8   Where any Statute provides a guarantee in relation to the supply of any good or service and that Statute avoids or prohibits provisions in a contract excluding, restoring or modifying the application of, or the exercise of, or liability under such guarantee, such guarantees as are not excludable, will be deemed to be included in this Agreement.   However, to the maximum extent permitted under the Statute, the liability of the Licensor for any failure to comply with the guarantee will be limited, at the option of the Licensor, to any one or more of the following:

(a)   if the failure relates to goods:

(i)   the replacement of the goods or the supply of equivalent goods;

(ii)   the repair of such goods;

(iii)   the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv)   the payment of the cost of having the goods repaired, and

(b)   if the failure relates to services:

(i)   the supplying of the services again; or

(ii)   the payment of the cost of having the services supplied again.

12.   SUSPENSION AND TERMINATION

12.1   The Licensor may suspend the License:

(a)   if the Customer fails to pay any License Fees (or any other fees owing to the Licensor by the Customer whether pursuant to this License Agreement or otherwise) when due, and after written notice from the Licensor to the Customer notifying the Customer of such failure, the Customer fails to make payment of such License Fees within five (5) Business Days of receipt of such notice;

(b)   if the Customer uses any of the Licensed Software in an unauthorised manner or allows unauthorised third parties to use the Licensed Software, and after written notice from the Licensor to the Customer notifying the Customer of unauthorised use, the Customer fails to prevent (with the reasonable assistance of the Licensor) such unauthorised use within five (5) Business Days of receipt of such notice;

12.2   The Licensor may terminate the License:

(a)   if the Customer fails to pay any License Fees (or any other fees owing to the Licensor by the Customer whether pursuant to this License Agreement or otherwise) when due, and after written notice from the Licensor to the Customer notifying the Customer of such failure, the Customer fails to make payment of such License Fees within ten (10) Business Days of receipt of such notice;

(b)   if the Customer uses any of the Licensed Software in an unauthorised manner or allows unauthorised third parties to use the Licensed Software, and after written notice from the Licensor to the Customer notifying the Customer of unauthorised use, the Customer fails to prevent (with the reasonable assistance of the Licensor) such unauthorised use within ten (10) Business Days of receipt of such notice;

(c)   immediately, and without notice to the Customer, if the Customer becomes Insolvent; or

(d)   if an event of Force Majeure continues for a period of more than two months.

12.3   Upon termination of this Agreement under clause 12.2 by the Licensor, all rights of the Customer in relation to the Licensed Software will cease immediately and the Customer will return all copies of any Licensed Software to the Licensor immediately.

12.4   Termination of this Agreement pursuant to clause 12 will not otherwise affect the accrued rights of any Party.

13.   GST

13.1   The License Fees are exclusive of any applicable GST chargeable in relation to the supply of the Deliverables or the supply of any other goods or services to the Customer. The GST treatment of any supply will be determined pursuant to the GST Act of the jurisdiction where a taxable transaction for GST purposes is deemed to take place.

13.2   If GST is properly chargeable on any such supply or supplies, the Customer will pay to the Licensor an amount equal to the GST, if any, chargeable in the relevant jurisdiction; provided, however, that such amount will only be required to be paid once the Licensor provides to the Customer with a Valid Tax invoice in relation to that amount.

13.3   Each Party will, to the extent permitted by law, provide the other with any additional Valid Tax Invoices as required for the purposes of this Agreement and, to the extent required by law, will correctly account for any GST properly due in its jurisdiction.

13.4   Subject to each Party's obligations relating to GST, each Party will cause all royalty tax, taxes, duties and other sums (including any royalty withholding tax, stamp duty, other documentary taxes, environmental tax or levy) legally payable by that Party arising in connection with this Agreement to be paid. In addition, in the event that the

Licensor is required by law to pay any royalty tax, taxes, duties and other sums ("Other Taxes") which are properly for the account of the Customer, the Customer will promptly indemnify or reimburse the Licensor in respect of such Other Taxes.

14.   FURTHER ASSURANCES

Each Party will sign, execute, deliver and do and will procure that each of its officers, employees and agents signs, executes, delivers and does, all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party to effectively carry out and give full effect to this Agreement and the rights and obligations of the Parties under it.

15.   NO MERGER

The rights and obligations of the Parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement will remain in full force and effect, be continuing agreements, indemnities, covenants and warranties and not be merged or extinguished by or upon termination or completion of any obligations under, this Agreement.

16.   NO PARTNERSHIP

16.1   Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the Parties for the purposes of the *Partnership Act*, *Income Tax Assessment Act 1936* or any other law of any jurisdiction.

16.2   A Party will not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other Party to any obligation.

17.   ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the Parties or their respective officers, employees or agents and all such other agreements will (other than in relation to Confidential information) be replaced by this Agreement.

18.   WAIVER

18.1   The failure, delay, relaxation or indulgence on the part of a Party in exercising any power, right or remedy conferred upon that Party by this Agreement will not operate as a waiver of that power, right or remedy, nor will the exercise or any single or partial exercise of any power, right or remedy preclude any other or further exercise of such power, right or remedy or the exercise of any other power, right or remedy under this Agreement.

18.2   Any waiver of a breach of this Agreement will be in writing signed by the Party granting the waiver and will be effective only to the extent expressly set out in such waiver.

19. APPLICATION OF LAW

19.1 This Agreement will be deemed to have been made in the State of Victoria, Australia and the construction validity and performance of this Agreement will be governed in all respects by the law for the time being in force in that State.

19.2 The Parties hereby submit themselves to the exclusive jurisdiction of the Supreme Court of Victoria and any court hearing appeals from that Court in respect of any dispute, proceeding or matter relating to this Agreement.

20. SEVERABILITY

If any provision of this Agreement is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

21. ASSIGNMENT AND SUB CONTRACTING

21.1 The Customer may not assign this Agreement or any of the rights granted pursuant to this Agreement, other than with the written consent of the Licensor, which consent may be granted or withheld at the Licensor's absolute discretion.

21.2 The Licensor may assign this Agreement to a third party upon giving the Customer twenty (20) Business Days prior written notice of the assignment or proposed sub contract.

22. SURVIVAL OF TERMS

Notwithstanding termination or expiration of this Agreement, the following clauses are deemed to survive such termination or expiration: clauses 1, 4 – 11 (inclusive), 12.3, 12.4, 13 –19 (inclusive) and this clause 22.

23. FORCE MAJEURE

With the exception of an obligation to pay monies, if a Force Majeure occurs, a Party will be relieved from its obligation to perform any obligations to which the Force Majeure relates, for the time during which the Force Majeure is in operation.

24. AUDIT OF USAGE

24.1 The Customer must keep accurate records of the number of copies of the Licensed Software that it has made, the location of those copies and system logs of the use of the Licensed Software in a form that enables the usage of the Licensed Software to be accurately audited (to ensure amongst other things compliance with the License Capacity)).

24.2 The Licensor may enter into Customer's premises on 5 days written notice to examine, or have examined by an independent third person (who is not a competitor of Licensee), the Customer's computer equipment and the Customer's books,

records and systems (and their logs) that relate to the Agreement, and the use of the Licensed Software.

24.3   Such examination will be conducted during business hours, and the Licensor shall use every effort to minimise the disruption to the Customer's business during the examination.

24.4   The Licensor shall be entitled to use the Customer's facilities, at no cost, to make copies of any of Customer's books, records and systems (and their logs) that it examines.

24.5   The Licensor may remove and keep any such copies and may only use same for determining whether the terms of this Agreement have been breached by the Customer and to enforce or otherwise protect its legal and contractual rights in relation to this Agreement and the Licensed Software.

24.6   The costs of the review will be borne by the Licensor, unless the review shows that the Customer has not used the Licensed Software in accordance with this Agreement and as a result has underpaid the Licensor. If this occurs then the costs of the audit will be promptly reimbursed to the Licensor by the Customer.

24.7   If the Customer has not used the Licensed Software in accordance with this Agreement then, in addition to (and without limiting) any other remedy the Licensor may have, the Customer must immediately pay to the Licensor the difference between the License Fee for the License that should have been paid if the Customer had acquired the relevant usage rights at the Commencement Date, and the amounts actually paid, as well as the fees payable in relation to any back Software Support Service for the increased license usage from the Commencement Date.